



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Adress: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,363	10/14/2005	Marie-Pascale Latorse	P/4976-19	9080
2352	7590	07/20/2010		
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			EXAMINER	
			PRYOR, ALTON NATHANIEL	
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
07/20/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/553,363

Filing Date: October 14, 2005

Appellant(s): LATORSE ET AL.

Paul Grandinetti
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/10/10 appealing from the Office action
mailed 8/24/09.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 1, 15-17, 21-23 are rejected. Claims 2-14 and 18 through 20 have been canceled.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being

maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

WO03/079788 Foor et al. 10-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1,15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Foor et al. (WO 03/079788; 10/2/03). Foor et al. teach a fungicidal composition comprising

fluopicolide and chlorothanil (page 44 lines 7 - 11, page 50 Table A Compd No. 1). Foor et al. teach that to the composition can be added diluents and surfactants (page 44 lines 33-35). Foor et al. teach a method of applying the composition to vegetable and fruit crop in order to control fungi growth (page 48 line 29 - page 49 line 22).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Floor et al. as applied to claims 1, 15-17 above. Floor et al. teaches all that is recited in claims 21-23 except for fluopicolide to chlorothalonil in a ratio of from 1:20 to 1:2. Note, Floor et al. teaches the combination of fluopicolide with chlorothalonil which makes all ratios of fluopicolide to chlorothalonil obvious in the absence of unexpected results. The specification provides data for the combination of fluopicolide to chlorothalonil in a ratio range of 1:20 to 1:1 other than at the ratio of 1:1.

(10) Response to Argument

With respect to the 102 rejection, Appellants acknowledge that Floor et al. disclose the combination of fluopicolide to chlorothalonil. However, the Appellants argue that Floor et al. do not teach the narrow and specifically defined ratios of fluopicolide to chlorothalonil as recited in the claims. Note the claims recite fluopicolide to chlorothalonil in a ratio of from 1:20 to 1:1. The Examiner argues that Floor et al. at

Art Unit: 1616

page 44 line 10 teach the combination of fluopicolide and chlorothalonil. Without any statement regarding ratios in Foor et al., this teaching reads on the claimed 1:1 ratio of fluopicolide to chlorothalonil claimed. Results presented using the Colby formula will not overcome this 102 rejection since Foor et al. teach a composition comprising fluopicolide and chlorothalonil in a ratio of 1:1.

With respect to the 103 rejection, Appellants' data appears to be unexpected for ratios of fluopicolide to chlorothalonil other than 1:1. However, the Appellants do not provide data for fluopicolide to chlorothalonil external to the scope of the claimed ratio range of 1:20 to 1:1 to show that expected results would be obtained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Alton N. Pryor/

Primary Examiner, Art Unit 1616

Conferees:

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1627

Application/Control Number: 10/553,363
Art Unit: 1616

Page 6